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Supreme Court, U.S.
FILED
FEB 7 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1123

In The

Supreme Court of the United States

October Term, 1986

RELIGIOUS TECHNOLOGY CENTER, a California corporation, and CHURCH OF SCIENTOLOGY INTERNATIONAL, INC., a California corporation,

Petitioners,

v.

JON ZEGEL, an individual; DAVID MAYO, an individual; CHURCH OF THE NEW CIVILIZATION (dba ADVANCED ABILITY CENTER), a California corporation,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can a church use RICO to obtain an injunction that prohibits the church's "enemies" from practicing similar religious beliefs?

2. Does the first, fifth or fourteenth amendment of the United States Constitution require state law to afford trade secret protection to religious scriptures that lack commercial value?

RULE 28.1 LIST

Counsel of Record for Respondents Church of the New Civilization, David Mayo and Jon Zegel certifies that there are no known parties interested in the outcome of this case other than those participating in the case, except various affiliates and adherents of Religious Technology Center and Church of Scientology International, Inc.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

A. THE FACTS

This case involves a religious dispute between two factions of the Scientology religion. Petitioners' complaint alleges that Respondents are "apostates and enemies of the religion of Scientology" who were engaged in "an apparent scheme to confuse or spread spiritual injury among Scientologists."

Petitioners are the Religious Technology Center ("RTC") and its "Mother Church," the Church of Scientology International, Inc. RTC views itself as "the protector of the Religion," responsible for maintaining "the purity and ethical use of the technology [religious doctrine], and for the protection and proper delivery of the Advanced Technology."

Respondents are the Church of New Civilization, its founder, David Mayo, and one of its former officials, Jon Zegel. Prior to founding the Church of New Civilization, Mayo was a high ranking member of the Church of Scientology for nearly 25 years. His duties included "auditing" and technical research and writing.

Scientology is a religion of "auditing." An "auditor" puts an individual through a series of procedures; the individual's responses are noted by use of an electronic metering device; further procedures are applied; and ultimately the individual rids his/her unconscious mind of "engrams," traumatic impressions previously recorded in this or earlier lives. *See generally Founding Church of Scientology v. United States*, 409 F.2d 1146, 1151-54 (D.C. Cir.), *cert. denied*, 396 U.S. 963 (1969). The auditing process is the "technology" of the religion, and the writings that set forth that "religious philosophy and spiritual healing technology comprise the scriptures of the religion."

Petitioners believe that parishioners must advance through the auditing process in defined stages and that religious harm is caused if the advanced religious doctrine is disclosed "at an improper stage." Petitioners say that for that religious reason and to preserve "the purity of the technology," not for any commercial pur-

pose, the advanced doctrine is kept confidential. This case concerns the advanced religious doctrine contained in scriptures known as the "NOTS pack."

Mr. Mayo developed the NOTS materials in 1978, in the course of a series of auditing sessions of Mr. Hubbard. Mr. Mayo thereafter extensively used the NOTS material for years in the course of his religious duties.

In 1982-83 there were disagreements among the leaders of the Church of Scientology, and the Church purged itself of dissidents. Mr. Mayo was one of them. He was kept under guard for six months, and he was told that he would be excommunicated unless he confessed that his criticisms were ill-advised, that he was a government "plant" and that he had committed alleged crimes. He refused. He was then declared to be an enemy of the church and excommunicated.

Following his excommunication, in July 1983, Mr. Mayo established the Church of the New Civilization, which provides religious counseling and training similar to that provided by the Church of Scientology. Mr. Mayo and others created a set of upper level scriptures for the new church. Respondents' witnesses swore that that material came from a variety of sources and from memory. Respondents began using their advanced scriptures in August 1983, and they had provided advanced religious instruction according to those scriptures for two years before the district court enjoined them from doing so.

In December 1983, three NOTS packs were stolen from an affiliate of Petitioners in Denmark. Contrary to Petitioners' statement (Pet. 6), there is no evidence—none—that Respondents aided or participated in that

theft, knew of it in advance or had anything to do with it. Moreover, the stolen physical property was returned to Petitioners by those who took it, and it is not involved in this case.

B. PRIOR PROCEEDINGS

On November 1, 1985, in a state court action against the Church of Scientology in which these Respondents are not involved, the court denied Petitioners' request to seal that court's records containing some of the scriptures involved here. Petitioners filed this action three days later.

Petitioners alleged that Respondents' religious scriptures were copied from the stolen NOTS packs, that Respondents were about to improperly disclose those scriptures to others and that disclosure would "confuse or spread spiritual injury among Scientologists." They asked the district court to restrain Respondents, the plaintiff in the state court action, his counsel, and others from making any public disclosure of the scriptures or using them in any way. Mr. Mayo denied under oath that the NOTS materials had been copied and swore that Respondents never had and "didn't want" Petitioners' materials.

The district court granted Petitioners' request for a temporary restraining order, but denied their motion for a preliminary injunction. Petitioners then renewed their motion and the court issued the preliminary injunction on November 23, 1985.[1]

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[1] Petitioners had previously brought another action against Respondents in January 1985, alleging essentially the same religious trade secret claims as are alleged here. *Religious Technology Center v. Robin Scott,* No. 85-711 (C.D. Cal.) Petitioners have never moved for an injunction in that case.

1. The District Court's Decision

There was no direct evidence to support the issuance of the preliminary injunction (or, indeed, any claim at all) against Respondents. Instead, the injunction was issued because the district court disbelieved Mr. Mayo's sworn testimony. It did not "believe" that "anyone, even Mr. Mayo" could have produced the religious teachings in Respondents' scriptures without reference to the stolen documents. Therefore, the court concluded: "I think that probably prima facie there is a RICO case here based on the idea that the documents were stolen and that they found their way into their present use." The court also concluded that the religious teachings in the documents were trade secrets under California law and that Petitioners would suffer irreparable religious injury from "any inadequately supervised disclosure of and use of the materials." (App. p. 8)

Accordingly, the court issued a broad preliminary injunction requiring Respondents to deliver their own religious materials to the court and prohibiting them

> from using, distributing, exhibiting or in any manner publicly revealing any and all originals, copies, retypings, recastings, variations of or altered versions of all confidential religious scriptures . . . or the contents thereof . . . .

(*Id.* at 3)

2. The Court of Appeals' Decision

The court of appeals reversed the injunction. Although it noted the serious first amendment issues created by an injunction that prevents one religious faction

from teaching religious doctrine claimed to be "owned" by another, 796 F.2d at 1089 n.15, it did not rest its decision on constitutional grounds. Instead it held that (1) civil RICO does not authorize injunctive relief and (2) as a matter of state law, the religious scriptures in dispute are not legally protectable trade secrets. 796 F.2d 1076 (9th Cir. 1986).

The court of appeals then denied petitions for rehearing and rehearing *en banc* (App. pp. 81-82) and a motion for a stay of its mandate. Petitioners did not seek a stay from this Court.

SUMMARY OF ARGUMENT

1. Petitioners contend that this Court should grant certiorari "based on a conflict of decisions among the circuits on the availability of injunctive relief to private plaintiffs under the RICO Act, and the overall importance of this issue." (Pet. 10) Petitioners' contention is wrong. The Court should deny the petition because:

a. There is no conflict in the circuits.

b. This religious dispute is a RICO case in name only; it is not an appropriate vehicle for deciding the propriety of private injunctive relief under RICO.

c. The question of private injunctive relief under RICO is not an important issue on which this Court should spend its time. In fact, the question rarely arises because RICO liability is purely derivative and injunctive relief is available based on the underlying predicate claims—if those claims have merit.

d. The decision below was correct; the statutory language and legislative history make clear that RICO does not give private parties an extra basis for seeking injunctive relief.

2. Petitioners also contend that the Court should grant certiorari "to reverse the Ninth Circuit's first impression ruling that religious materials, merely because they are owned by non-profit religious organizations, are not protectable under the California Trade Secret Act." (Pet. 10-11) This contention is wrong for two reasons:

a. The court of appeals made no such ruling. It held only that the religious scriptures involved in this case did not have the independent economic value necessary to qualify as a protectable trade secret under state law.

b. Neither the court of appeals' interpretation of state law nor Petitioners' factual arguments presents any constitutional question or any other issue of interest to this Court.

REASONS FOR DENYING THE WRIT

I. THE DECISION THAT RICO DOES NOT AUTHORIZE PRIVATE INJUNCTIONS DOES NOT WARRANT THIS COURT'S REVIEW

A. THERE IS NO CONFLICT IN DECISIONS

1. The Courts of Appeals

Petitioners say the decision below conflicts with other circuit decisions. (Pet. 10, 23-32) This is not true. The

Ninth Circuit found that this was "a matter of first impression for an appellate court." 796 F.2d at 1082. And so it is. Petitioners refer to three cases. None conflicts with this one.

Petitioners concede that *Bennett v. Berg,* 685 F.2d 1053, 1064 (8th Cir. 1982), *aff'd on rehearing en banc,* 710 F.2d 1361, *cert. denied,* 464 U.S. 1008 (1983), "did not decide" whether equitable relief is available to private plaintiffs. (Pet. 26)

Petitioners nevertheless argue that in *Bennett,* "the Court determined that ['legal writers'] had concluded that equitable relief was available." (Pet. 26-27) If the court had made such a determination that, of course, still would not present any conflict in decisions by the courts of appeals. But it did no such thing; instead, the court simply "note[d] for the information of the parties and the district court such scholarship as [it] ha[d] discovered." 685 F.2d at 1064. That consisted of a single law review article, and overlooked the wealth of commentary supporting the decision below in this case. (*Infra* p. 21 n.9)[2]

Petitioners also cite *Aetna Casualty & Sur. Co. v. Liebowitz,* 730 F.2d 905 (2d Cir. 1984) (Pet. 25), but it does not conflict with the decision below, either. *Aetna* concerns the propriety of attorney's fees in a RICO action that had been settled after a preliminary injunction was issued. The district court held that "analysis of whether plaintiff was entitled to injunctive relief under

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[2] Petitioners also rely on the concurring paragraph of a single judge on rehearing *en banc,* 710 F.2d at 1365-66, to assert a conflict with the decision below. One judge's sentiment hardly suggests a conflict in the circuits.

§ 1964 is not . . . necessary for a determination of this [attorneys' fees] motion," 570 F. Supp. 908, 910 (E.D. N.Y. 1983), and noted that the issue "appears at least to be an open question." *Id.* at 911. Similarly, the Second Circuit addressed injunctive relief only long enough to presage the Ninth Circuit: civil RICO "does not refer to injunctive relief." 730 F.2d at 909.

Moreover, even if *Aetna* held what Petitioners contend it did, that is not the definitive Second Circuit view. In *Trane Co. v. O'Connor Sec.,* 718 F.2d 26, 28 (2d Cir. 1983), another Second Circuit panel said that "courts which have confronted the issue have expressed serious doubt concerning the propriety of granting injunctive relief under any circumstances to private parties. . . . We have the same doubts." And still another Second Circuit panel in *Sedima, S.P.R.L. v. Imrex Co.,* 741 F.2d 482, 489 n.20 (2d Cir. 1984), *rev'd on other grounds,* 473 U.S. 479, 105 S. Ct. 3275 (1985), found it "altogether likely that § 1964(c) as it now stands was not intended to provide private parties injunctive relief." Thus, *Aetna* creates no conflict in the circuits because it is not the law of any circuit. *See Davis v. United States,* 417 U.S. 333, 340 (1974).

Petitioners' reference to *Dan River, Inc. v. Icahn,* 701 F.2d 278, 290 (4th Cir. 1983) (Pet. 28), is difficult to understand, for they concede that the court there used the same analysis as the court of appeals here and found "substantial doubt" that RICO grants private parties equitable relief. Thus, *Dan River* supports the decision below.

In short, there is no conflict among the circuits.

2. The District Courts

A conflict in decisions between a court of appeals and a district court or between district courts is not a basis for this Court's review. S.Ct. Rule 17.1(a); R. Stern, E. Gressman & S. Shapiro, *Supreme Court Practice* § 4.8 (6th ed. 1986).

Moreover, only one district court has held even arguably contrary to the Ninth Circuit. *Chambers Dev. Co. v. Browning-Ferris Indus.*, 590 F. Supp. 1528, 1540-41 (W.D. Pa. 1984) (Pet. 31). As Petitioners concede, the *Chambers* court simply "declined to strike a prayer for equitable relief"; nothing more. (Pet. 31) Moreover, *Chambers* rests on RICO's "remedial purpose," *id.* at 1540—a purpose that does not support the implication of private injunctive relief. *See infra* p. 21.

Petitioners try to explain away the fact that every other district court decision on point comports with the decision below by saying each "was decided prior to this Court's decision in *Sedima.*" (Pet. 31) But Petitioners do not explain why that matters, and it does not. *Sedima's* approach to statutory interpretation was precisely the one followed by the court of appeals here: RICO should be applied as Congress wrote it and not judicially rewritten. *Sedima*, 105 S.Ct. at 3287. In any event, the fact remains that the few district court decisions addressing the issue are consistent with the opinion below. *See Miller v. Affiliated Fin. Corp.*, 600 F.Supp. 987, 994 (N.D. Ill. 1984); *DeMent v. Abbott Capital Corp.*, 589 F.Supp. 1378, 1382-83 (N.D. Ill. 1984); *Kaushal v. State Bank of India*, 556

F.Supp. 576, 581-84 (N.D. Ill. 1983); *Ashland Oil, Inc. v Gleave,* 540 F. Supp. 81, 84-86 (W.D.N.Y. 1982).[3]

Thus, there is no meaningful conflict in decisions on the question Petitioners tender. The question has not yet reached any other court of appeals, and the dicta so far solidly support the court of appeals' decision here. In these circumstances, this Court should decline to review the issue. *See, e.g., McCray v. New York,* 461 U.S. 961, 962 (1983) (Stevens, J.) ("further consideration of the substantive and procedural ramifications of the problem by other courts will enable us to deal with the issue more wisely at a later date").

B. THIS IS NOT THE CASE TO DECIDE WHETHER RICO AUTHORIZES PRIVATE INJUNCTIONS

If this Court wishes to decide whether RICO authorizes private injunctions, it should do so in a case that has at least some relation to the matters RICO typically concerns. This is not that case, to say the least. *See United States v. Shannon,* 342 U.S. 288, 294 (1952) (Frankfurter, J.) (urging dismissal of writs because "they were legal sports. Each presents a unique set of circumstances. Neither is likely to recur; both are individualized instances").

RICO has been applied in two major categories; this case presents neither. First, as Petitioners acknowledge, a

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[3] Both *Marshall Field & Co. v. Icahn,* 537 F. Supp. 413, 420 (S.D.N.Y. 1982) and *Vietnamese Fisherman's Ass'n v. Knights of Ku Klux Klan,* 518 F. Supp. 993, 1014 (S.D. Tex. 1981) (Pet. 32), denied injunctive relief because there was no "likelihood of success." Neither court reached the issue raised here.

"primary objective of RICO [is] to curtail organized crime." (Pet. 15) There is not even a hint of organized crime here.

Second, forty percent of the published civil RICO decisions alleged securities fraud and thirty-seven percent common law fraud in a business or commercial setting. The remaining twenty-three percent include a variety of matters including traditional organized crime activities, antitrust and bribery. *Sedima*, 105 S. Ct. at 3287 at n.16 (citing *The Report of the Ad Hoc Civil RICO Task Force of the ABA Section of Corporation, Banking and Business Law* 55-56 (1985) ("ABA Report")). This dispute between religious factions over the use of religious doctrine is the antithesis of those cases.[4]

In short, RICO is neither designed for nor typically arises in the context of a religious dispute, and the facts and issues in this case are *sui generis*. Therefore, to use this case to resolve the need for and availability of private

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[4] Two cases did involve religious disputes, ABA Report, p. 56 n.61; neither was anything like this one. *Congregation Beth Yitzhok v. Briskman*, 566 F. Supp. 555, 557 (E.D.N.Y. 1983), involved a battle over the disposition of property belonging to a deceased rabbi. The court correctly noted "[t]he core of this litigation is an internecine dispute between rival religious factions. If there can be a case that should not be covered by the RICO statute, this is it." The court held that it could not adjudicate the controversy "without first wading deeply (and impermissibly) into religious issues," *id.* at 558; it therefore denied an injunction and dismissed the case for want of justiciability.

The second case, *Van Schaick v. Church of Scientology*, 535 F. Supp. 1125, 1135-39 (D. Mass. 1982) dismissed the RICO claims on pre-*Sedima* grounds, but also noted, on Petitioners' affiliates' urging, that RICO might not apply to religious entities.

injunctive relief under RICO would be inappropriate and even unfair to other litigants who face the issue in typical RICO settings.

Indeed, this case may not even present the question Petitioners assert, because, in fact, there is no genuine RICO claim here. RICO was an afterthought, raised only to confer federal jurisdiction. 796 F.2d at 1080 n.4. The lone basis for RICO is the district court's highly dubious refusal to believe that Respondents, who created the NOTS materials and had used them for years, could reproduce them without copying from stolen documents they swore they never saw. And, as the Ninth Circuit recognized, "[i]t is not clear whether [Petitioners' alleged] injury is sufficient to allow the Church to press even a civil RICO damages action." *Id.* at n.6.

Finally, even if this case were representative of RICO litigation, the record contains only the evidence that was compiled during the preliminary injunction hearing. The important factual issues, including those concerning the alleged conspiracy, are still to be resolved at the impending trial on the merits. Thus, this case does not present the kind of record that the Court can best utilize to evaluate the injunction question in a concrete context. *See Estelle v. Gamble,* 429 U.S. 97, 115 (1976) (Stevens, J., dissenting) ("the crude allegations of this complaint do not provide the kind of factual basis the Court normally requires"); *Wainwright v. City of New Orleans,* 392 U.S. 598 (1968) (Harlan, J., concurring in dismissal of certiorari) ("I find this record too opaque to permit any satisfactory adjudication of that question"); *Ellis v. Dixon,* 349 U.S. 458, 464 (1955) (dismissing certiorari because "[e]ven if we were to look at the matter ourselves *de novo,* we could not on this vague

and empty record decide the . . . issues sought to be presented").

C. THIS CASE DOES NOT PRESENT IMPORTANT QUESTIONS

Unable to demonstrate a conflict in the circuits, Petitioners argue that the question of private injunctive relief under RICO is important, "obviously, . . . of national significance." (Pet. 13) Petitioners overstate their case.

First, the question of injunctive relief arises far less often than Petitioners would have the Court believe. Over 270 RICO decisions have been published (*Sedima*, 105 S. Ct. at 3287 n.16) and the number of claims is undoubtedly much larger, yet only a dozen have even raised an injunction question. (*Supra* pp. 8-11)

Second, Petitioners' unhappiness with the doctrine of pendent jurisdiction is no ground for this Court to grant certiorari in this case. They argue that "[t]he existence of pendent party jurisdiction . . . [is] a subtle and complex question" (Pet. 17), and that "in light of some district courts' hostility to RICO, that uncertainty [over pendent jurisdiction] may altogether too often be resolved by throwing out the pendent claims." (Pet. 17-18) If true, that is no different than any other case where, if a district court errs, it can be corrected. That is no basis for review here.

Moreover, Petitioners' fears have nothing to do with this case. The district court in this case accepted the pendent state trade secrets claim, reviewed state law and made a decision on both the RICO and the pendent state

claim. (App. pp. 9-11) This Court should hardly review this case because in some future case a district court might improperly fail to do what this district court did.

Third, Petitioners' fear of the "specter (sic) of inconsistent results" and forum shopping is misplaced. (Pet. 20-21) Their argument is premised either on a conflict that does not exist (*supra* pp. 7-11) or on the diversity of state laws that is inherent in our federal system. Neither is a reason for certiorari.

D. THE DECISION BELOW WAS CORRECT

This is not the occasion to argue the merits, but because Petitioners rely primarily on their substantive views (Pet. 33-45), we respond briefly. The court of appeals conducted a scholarly and extensive analysis of RICO's language and legislative history and concluded that RICO does not authorize private injunctions. Both the analysis and the conclusion are sound.

1. Statutory Language

Petitioners say a "dispassionate reading" of RICO "leads ineluctably" to the conclusion that Section 1964 included equitable relief for private parties. (Pet. 33) In fact, no reading of Section 1964—passionate or otherwise—will uncover any mention of private equitable relief.

The remedies for violations of RICO are contained in Section 1964. Section 1964(a) is a general jurisdictional grant. Section 1964(b) specifically authorizes injunctive relief, but only in actions brought by the Attorney General. This Court has recognized that neither sub-section (a) nor sub-section (b) provides any private remedy:

> The civil remedies in the bill passed by the Senate, S. 30, were limited to injunctive actions by the United States and became §§ 1964 (a), (b), and (d).

Sedima, 105 S. Ct. at 3280.

The only other remedial provision is Section 1964(c), which provides:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

18 U.S.C. § 1964(c) (1984). That language not only omits any provision for private injunctive relief, it is the same language that Congress knew had been definitively interpreted to *exclude* injunctive relief under the antitrust laws. *See* 796 F.2d at 1086-87.

Thus, Congress enacted a detailed remedial scheme that pointedly omits any private injunctive remedy. To imply such a remedy would be contrary to established principles of statutory interpretation.[5] *See* 796 F.2d at 1087-88 & n.14; *Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n,* 453 U.S. 1, 15 (1981) ("Congress provided precisely the remedies it considered appropriate"); *Northwest Airlines, Inc. v. Transport Workers Union,* 451 U.S. 77, 97 (1981) ("The presumption that a remedy was deliberately omitted from a statute is strong-

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[5] *Herman & MacLean v. Huddleston,* 459 U.S. 375, 386 (1983) (Pet. 37) does not reject *expressio unius est exclusio alterius.* There the Court found evidence of a specific congressional intent to cumulate remedies.

est when Congress has enacted a comprehensive legislative scheme including an integrated system of procedures for enforcement'').

Thus, there is nothing in the language of the statute authorizing private injunctions.

2. Legislative History

Petitioners complain that the Ninth Circuit looked to legislative history. (Pet. 35) But since there is no authorizing statutory language, private injunctions under RICO could be judicially created only on the basis of supporting legislative history. That history, however, makes clear that Congress did not intend to authorize private injunctive relief. First, although several pre-RICO bills provided for private injunctive relief, none was enacted. *See* 796 F.2d at 1084.

Second, an amendment that would have expressly provided for private injunctions was presented, but was not enacted. *Id.* at 1084-85. Petitioners argue that the amendment proposing private injunctive relief ''was withdrawn, *not* defeated.'' (Pet. 42) But that does not matter. It was withdrawn for the very reason Petitioners deny here: because ''[i]t does offer an additional civil remedy'' that Congress was not prepared to adopt without further consideration. 796 F.2d at 1086. *See* 116 Cong. Rec. at 35,346 (1970).

Third, in the first session of Congress after RICO was enacted, unsuccessful efforts were made to add a provision giving private parties the right to seek injunctive relief. 796 F.2d at 1086. Petitioners argue that ''the views of a subsequent Congress form a hazardous basis for

inferring the intent of an earlier one" (Pet. 44), but this is not evidence of Congress' original intent; it is proof that Congress recognized that RICO does not now contain injunctive relief. *See, e.g., North Haven Bd. of Educ. v. Bell,* 456 U.S. 512, 530-35 (1982); *Texas Indus. v. Radcliff Materials, Inc.,* 451 U.S. 630, 645 (1981) ("the continuing existence of this statutory scheme for 90 years without amendments authorizing contribution is not without significance"); *United States v. Rutherford,* 442 U.S. 544, 554 n.10 (1979) (where "construction has been 'fully brought to the attention of the public and the Congress,' and the latter has not sought to alter that interpretation . . . then presumably the legislative intent has been correctly discerned") (quoting *Apex Hosiery Co. v. Leader,* 310 U.S. 469, 489 (1940).

Thus, the legislative history confirms the statutory language: Congress intentionally omitted any provision for private injunctive relief.[6]

3. Policy

Finally, Petitioners submit that RICO *should* include private injunctive relief. But:

a. That is not the issue. The issue is whether it *does. Touche Ross & Co. v. Redington,* 442 U.S. 560, 578

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[6] Petitioners argue that RICO's liberal construction clause precludes examination of the legislative history, citing *Brown v. Barry,* 3 U.S. (2 Dall.) 365, 367 (1797) (Pet. 36). *Brown* merely states the obvious point that legislative intent prevails over abstract rules of construction. That is all the more reason to examine what Congress intended.

Furthermore, Petitioners' own cases confirm that "Congress' perception of the law that it was shaping" is determinative. *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Curran,* 456 U.S. 353, 378 (1982). (Pet. 29-30 n.5)

(1979) ("The ultimate question is one of congressional intent, not one of whether this Court thinks that it can improve upon the statutory scheme that Congress enacted into law"); *Sedima,* 105 S. Ct. at 3287 (warning against "statutory amendment [in]appropriately undertaken by the courts"). Furthermore, if amendment is desirable, Congress is the place to make it, and Congress is actively considering that suggestion. In the last session of Congress alone, at least eleven RICO bills were introduced, one of which would specifically add a private right of injunctive relief. H.R. 4892, 99th Cong., 2d Sess. 5 (1986). This Court should not preempt that congressional decision making.

b. Congress' initial decision makes sense. Its provision of a treble damages remedy but not injunctive relief was carefully tailored to the situation.[7] As the ABA Report determined, "it is difficult to conclude that a genuine need for equitable relief cannot be met adequately through traditional equitable actions under state law. This being the case, there seems little reason to expand Civil RICO beyond its express terms to provide a further avenue for such relief." (ABA Report, pp. 339-40) (citations omitted). *See, e.g., USACO Coal Co. v. Carbomin Energy, Inc.,* 539 F.Supp. 807, 814-16 (W.D. Ky.), *aff'd on other grounds,*

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[7] *See, e.g.,* 116 Cong. Rec. at 35,346 (1970) (quoted at 796 F.2d at 1086) ("prudence would dictate that the Judiciary Committee very carefully explore the potential consequences that this new remedy might have in all the ramifications which this legislation contains"). Thus, as the court below noted, "[i]t may be that in drawing the line between private equitable relief and private damages, Congress wished to preclude federal courts from interfering with the day-to-day running of businesses at the behest of what might be only a disgruntled competitor." 796 F.2d at 1088.

689 F.2d 94 (6th Cir. 1982) (granting injunction on pendent state claims). Thus, because RICO liability is always derivative from the predicate criminal acts, injunctive relief is available—if the merits support it—in virtually every case.[8]

Nor is Congress' limitation on the available remedies peculiar to RICO. To the contrary, it has imposed similar limitations under many other statutes. *See, e.g., National R.R. Passenger Corp. v. National Ass'n of R.R. Passengers,* 414 U.S. 453, 456-65 (1974) (no private injunctions under Amtrak Act); *T.I.M.E. Inc. v. United States,* 359 U.S. 464, 470-71 (1959) (Interstate Commerce Act); *Lockerty v. Phillips,* 319 U.S. 182, 186-89 (1943) (upholding provision of Emergency Price Control Act withholding lower court authority to enjoin enforcement); *Sprague v. Ticonic Nat'l Bank,* 307 U.S. 161, 164-65 (1939) (Congress may modify courts' equitable jurisdiction); *Lauf v. E.G. Shinner & Co.,* 303 U.S. 323, 329-30 (1938) (upholding Norris-La Guardia Act denial of injunctive relief); *Cell Assocs., Inc. v. National Instits. of Health,* 579 F.2d 1155, 1159-60 (9th Cir. 1978) (denying injunctive relief under Privacy Act which limits private plaintiff remedies to damages, costs and attorney's fees); *International Tel. & Tel. Corp. v. General Tel. & Elecs. Corp.,* 518 F.2d 913, 920-26 (9th Cir. 1975) (private Clayton Act remedies limited to specifically authorized equitable relief and not divestiture available to the government); *Chrisman v. Sisters of St. Joseph,* 506 F.2d 308, 311 (9th Cir. 1974) ("The Supreme Court has consistently upheld restrictions placed on the ability of

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[8] Petitioners recognize that private injunctive remedies will be available on the pendent claims if the district court exercises its discretion to accept pendent jurisdiction. (Pet. 17-18)

the inferior courts to issue injunctive relief with respect to designated causes of action").

c. Petitioners' reliance on RICO's "remedial purposes" (Pet. 37) misses the mark. As this Court has held: "the mere fact that [the statute] was designed to provide protection for [the plaintiff class] does not require the implication of [an additional remedy] in their behalf." *Touche Ross*, 442 U.S. at 578. *Accord, Securities & Exch. Comm'n v. Sloan*, 436 U.S. 103, 115-16 (1978) (general reference to "statute's remedial purposes" does not justify reading Act "more broadly than its language and the statutory scheme reasonably permit"); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 200-01 (1976) (rejecting construction more consistent with "remedial purposes" because "the language of a statute controls when sufficiently clear in its context").[9]

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[9] Petitioners' claim that "most" commentators "reject the suggestion . . . that the statute denies to the courts the power to grant all forms of needed relief" (Pet. 13-14 n.2) is simply untrue. *See, e.g.*, Weissman, *In the High Stakes Game of Civil RICO, Can Private Claimants Raise the Ante Even Further with Claims for Equitable Relief?* 1 RICO L. Rep. 234 (1984) ("the stronger arguments favor a finding that equitable relief is not available to private RICO claimants"); Bridges, *Private RICO Litigation Based Upon "Fraud in the Sale of Securities,"* 18 Ga. L. Rev. 43, 74 (1983) ("Although some commentators and plaintiffs urge that RICO allows private injunctive relief, their arguments are incorrect"); Fricano, *Civil RICO: An Antitrust Plaintiff's Considerations*, 52 Antitrust L.J. 361, 374 (1983) ("arguments may be made on both sides of the issue"); Note, *Civil RICO: The Temptation and Impropriety of Judicial Restriction*, 95 Harv. L. Rev. 1101 (1982) (no discussion of injunctive relief); Long, *Treble Damages for Violations of the Federal Securities Laws: A Suggested Analysis and Application of the RICO Civil Cause of Action*, 85 Dickinson L. Rev. 201 (1981) (no discussion of injunctive relief); Blakey & Gettings, *Racketeer Influenced And Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 Temple L.Q. 1009, 1007-21, 1047 (1980) (discussion of legislative history only).

Petitioners also argue that the lack of a private injunction "hamstrings the statute's effect" (Pet. 15) because district courts "will be unable to utilize injunctions to curtail ongoing continuing crime" (*Id.* at 22), and private parties won't "even bother to sue." (*Id.* at 21) Petitioners are just making up a problem that isn't there. Despite the fact that no court has issued a private RICO injunction, there has been a wealth of RICO litigation. *Sedima,* 105 S. Ct. at 3277 n.1. And, "[t]o the extent that injunctive relief is truly needed to dissolve organized criminal enterprises, the provision for equitable actions by the Attorney General should be adequate." (ABA Report, p. 340)

II. THE CALIFORNIA TRADE SECRETS LAW ISSUE DOES NOT WARRANT REVIEW

A. PETITIONERS MISSTATE THE DECISION BELOW

Contrary to Petitioners' characterization, the court of appeals did not hold that "religious materials, merely because they are owned by non-profit religious organizations, are not entitled to the protection afforded by the California trade secrets statute." (Pet. 45) Rather, the court held only that the religious scriptures in issue "cannot be said to have the 'independent economic value' necessary to qualify as a protectible trade secret" under California law. 796 F.2d at 1091. There is nothing remarkable about that decision. It concerns only state law and

fact issues,[10] and there is no reason why this Court should review it.

This Court does not review matters of state law. *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, —, 105 S.Ct. 2794, 2800 (1985) ("district courts and courts of appeal are better schooled in and more able to interpret the laws of their respective States"); *Butner v. United States*, 440 U.S. 48, 58 (1979) ("We decline to review the state-law question. The federal judges who deal regularly with questions of state law in their respective districts and circuits are in a better position than we to determine how local courts would dispose of comparable issues"); *Huddleston v. Dwyer*, 322 U.S. 232, 237 (1944) ("ordinarily we . . . do not review . . . the considered determination of questions of state law by the intermediate federal appellate courts").

Nor does the Court grant certiorari to review factual determinations. *Texas v. Mead*, 465 U.S. 1041, 1043 (1984) (Stevens, J.); *National Labor Relations Bd. v. Henricks County Rural Elec. Membership Corp.*, 454 U.S. 170, 176 n.8 (1981) (improvident grant of cross-petition that presented primarily a question of fact); *United States v. Johnston*, 268 U.S. 220, 227 (1925) ("[w]e do not grant a certiorari to review evidence and discuss specific facts").

B. THERE IS NO CONFLICT IN DECISIONS

Petitioners' attempt to create a conflict with the Fourth Circuit's aged decision in *Purcell v. Summers*, 145

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[10] This is apparent from Petitioners' effort to argue their interpretation of California law (Pet. 47-49) and their version of the facts. (Pet. 57)

F.2d 979 (4th Cir. 1944) (Pet. 11-12, 55-59), rests on their inaccurate description of the decision below. The court below decided only that California trade secret law did not apply to a particular set of facts. *Purcell* had nothing to do with either California trade secret law or these unique facts. In *Purcell,* the court simply prevented a dissident organization from using a church's *name.* 145 F.2d at 981. That is entirely different from this case, where Petitioners, in the name of religious purity, claim the exclusive right to religious *ideas.* And the Ninth Circuit explicitly said so. 796 F.2d at 1091 n.17.

Finally, even if there were a conflict, it is well settled that "[a]s to questions controlled by state law . . . conflict among circuits is not of itself a reason for granting a writ of certiorari. The conflict may be merely corollary to a permissible difference of opinion in the state courts." *Ruhlin v. New York Life Ins. Co.,* 304 U.S. 202, 206 (1938).

C. PETITIONERS' CONSTITUTIONAL CLAIMS ARE FRIVOLOUS

Petitioners' efforts to find a federal constitutional question in the decision below again rests on their misunderstanding of the decision and California law. The constitutionality of the California Trade Secrets Act was not, and is not, in issue, and the court below did not hold that religious organizations or materials can never receive trade secret protection. (Pet. 50, 61-62) Again, all it held was that the materials in issue—which happened to be religious materials—did not have the economic value required for trade secret protection. That raises no constitutional issue.

Petitioners say that because the decision "directly effects the manner in which Petitioners' religious beliefs are disseminated," it "[t]herefore" violates the free exercise clause. (Pet. 63) But that assumes that Petitioners have a monopoly on certain religious beliefs and the *exclusive* right to "exercise" those beliefs. No such right exists, and Respondents' use of the disputed scriptures does not interfere in any way with Petitioners' ability to use their similar scriptures. Petitioners' contention that *their* free exercise is violated by *other* people holding the same beliefs and practicing the same religion is absurd.[11]

In fact, Petitioners' first amendment analysis is off by 180 degrees. It is Petitioners who threaten Respondents' right to exercise their religion, not the other way around. As the court of appeals found, "the effect of the injunction's prohibition on the use of any of the higher level materials is to curtail the religious practice of [Respondents'] adherents." 796 F.2d at 1089 n.15. It also found that "the court's review of [Petitioners'] stolen materials and [Respondents'] documents to determine whether essential elements have been appropriated raises the potential for impermissible entanglement in matters

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[11] None of Petitioners' cases (Pet. 62) suggest how their free exercise is implicated. *See McDaniel v. Paty,* 435 U.S. 618 (1978) (state law barring ministers from seeking office is unconstitutional); *Gillette v. United States,* 401 U.S. 437 (1971) (cited by Petitioners as *Negre v. Larsen*) (upholding conviction under Military Selective Service Act against first amendment challenge); *Fowler v. Rhode Island,* 345 U.S. 67 (1953) (ordinance prohibiting political or religious addresses in park is unconstitutional); *Follett v. McCormack,* 321 U.S. 573 (1944) (ordinance requiring booksellers to pay license fee unconstitutional as applied to preacher selling religious books).

of religious doctrine." *Id.*[12] Finally, "the court's recognition of 'religious injury' from premature unsupervised exposure to Church materials as irreparable harm justifying an injunction prompts worrisome establishment concerns." *Id.* (citations omitted)[13]

The court of appeals recognized "the significant first amendment issues raised by the district court's injunction" (*Id.*); thus, it wisely and properly interpreted the Trade Secrets Act according to the legion of cases which hold that laws are to be construed to avoid, not create, such constitutional issues. *E.g., Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 348 (1936) (Brandeis, J., concurring) ("Court will first ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided"). The court of appeals' interpretation of state law to avoid difficult federal constitutional issues was correct. There is no reason why this Court should get into that thicket.

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[12] In every religious trade secret case, the court would necessarily be embroiled in resolving issues concerning religious doctrine and practice. That is because a court could not find an infringement without determining what the religious secret was, its religious significance, and the religious significance of any differences between the secret as practiced by plaintiff and defendant. *Cf. Presbyterian Church v. Hull Church*, 393 U.S. 440, 450 (1969).

[13] The purpose of the injunction was to protect religious teaching from purported misuse; essential to that is a determination that Petitioners are the "true" holders of the secrets of the religion. The injunction's effect was to give Petitioners the exclusive right to practice and teach the upper levels of the parties' religion; that put the sovereign power of the court on the side of one particular church. *See First Presbyterian Church v. United Presbyterian Church*, 464 N.E.2d 454 (N.Y.), *cert. denied*, 469 U.S. 1037 (1984).

CONCLUSION

The petition should be denied.

February 5, 1987

Respectfully submitted,

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